

Remarks

The above Amendments and these Remarks are in response to the Office Action mailed October 3, 2003. This response is filed within Two months of the mailing date of the final action and an Advisory Action is requested. The fee for addition of new claims is included herewith.

Claims 1-25, 28, 49-54, 65-71, 73-76 and 92-124 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected all pending claims. The present Response cancels claims 1-25, 28, 49-54, 65-71, 73-76, 92, 101, 123-124 and add new claims 125- 157, leaving for the Examiner's present consideration claims 93-100, 102-122, 125-157.

Reconsideration of the rejections is requested. Applicants reserve the right to appeal the rejection of the cancelled claims.

Arguments

The Examiner rejected Claims 1-25, 28, 49-54, 65-71, 73-76, 92-99, 101-122 under 35 U.S.C. 103(a) as being unpatentable over Lennox in view of Candelaria et al.

In the Office Action, the Examiner considered Applicant's argument that both references require spacers but Applicants' device does not. Applicants' device uses a polymeric material to encapsulate and position the seeds, which is clearly not disclosed or taught by either of the reference. Nonetheless, the examiner maintained his rejection on the grounds that the claims use the open-ended "comprising," and therefore is not limited to an absence of such spacers. The Examiner also argued that there is no language directed to any kind of mechanism to provide position the seeds in a desired interval. We have amended the claims and request re-consideration.

Independent claim 93, currently amended, claims a therapeutic element comprising a polymeric material and a plurality of radioactive seed elements, wherein said polymeric material forms an elongated member by encapsulating and connecting adjacent radioactive seed elements end-to-end at desired intervals. Since adjacent seed elements are connected to one another end-to-end by the polymeric material, it avoids the use of pre-fabricated spacers. If a spacer is present between adjacent seed elements, it would not be possible for the polymeric material to connect adjacent seed elements end-to-end to each other. One end of the seed

element would be adjacent to a spacer, instead of being connected to the adjacent seed element. See Fig 1A and 2 of Lennox, and Fig. 2 of Candelaria.

The Examiner also rejected claims 123-124 under 35 U.S.C. 112, second paragraph as being indefinite for being directed to steps in manufacturing the device and not to structural limitations of the device itself. Applicants hereby cancel claims 123-124 and request

Claims 93-100, 102-103 were rejected under 35 U.S.C. 102(b) as being anticipated by Horowitz (U.S. Patent 4,815,449).

Horowitz teaches a delivery system for interstitial radiation therapy comprising a substantially non-deflecting elongated member of material which is absorbable in living tissue and a plurality of radioactive seeds dispersed in a predetermined array within the member. In one form, the member comprises an elongated member having the seeds longitudinally spaced therein and forming a needle that can be inserted in the tumor to be treated. (Horowitz abstract, emphasis added).

The structure taught by Horowitz, described as a “needle,” is required to be rigid and non-deflecting. (Horowitz, col 3, lns. 30-36). There is no suggestion in Horowitz that teaches the benefits of making the implant radially flexible. Applicant’s implant is constructed to be radially flexible. Applicants have amended independent claim 93 to claim this feature, and request reconsideration.

Further, claims 101, 104-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horowitz in view of Lennox and Candelaria.

As discussed above, Horowitz required that the elongated implant be non-deflecting. It is, therefore, contrary to Horowitz’s teachings to combine its implant with the teachings of Lennox or Candelaria to make the implants radially flexible. We respectfully submit that it is against the teachings of the references to combine them as suggested.

New independent claim 125 is directed to how the seeds are secured in the elongate member without the use of spacers. It claims a therapeutic element comprising an elongate solid member made of a bio-absorbable polymeric material, radioactive seed elements; wherein said radioactive seed elements are secured along the elongated member by molding said seed elements directly into the bio-absorbable polymeric material. This is clearly not disclosed or taught by the cited references.

Having seeds spaced at individually set intervals is designed for the precise placement of the seeds into a treatment. Since the cited references rely on the use of pre-fabricated spacers of set lengths, it is only possible to place seeds at pre-set intervals. Compare this to the instant invention, where the seeds are directly molded into the elongated member and can be placed at any desired interval along the member. Applicants submit that their invention is novel and an improvement over the cited art. Support for the new claims can be found in paragraphs [0039]-[0041] of the disclosure.

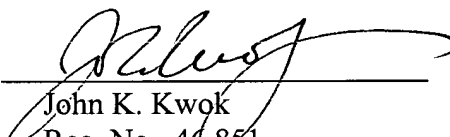
The references cited by the Examiner but not relied upon have been reviewed, but are not believed to render the claims unpatentable, either singly or in combination.

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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